TONG SOON TIONG & ORS A

v.

FA SECURITIES SDN BHD

FEDERAL COURT, PUTRAJAYA B
ZULKEFLI MAKINUDIN CJ (MALAYA)
HASHIM YUSOFF FCJ
SURIYADI HALIM OMAR FCJ
AHMAD MAAROP FCJ
SULONG MATJERAIE FCJ C
[CIVIL APPLICATION NO: 02-26-2012(T)]
16 JANUARY 2013

BANKRUPTCY: *Capacity of bankrupt - Competency to maintain an action - Whether sanction of Director General of Insolvency mandatory - Whether failure to obtain sanction rendered claim dismissed - Whether action fell under exception of s. 38 Bankruptcy Act 1967* D

EVIDENCE: *Witness - Competency - Witness a bankrupt - Whether interested witness - Whether testimony required corroboration - Whether status as bankrupt rendered evidence inadmissible - Evidence Act 1950, s. 118* E

The first five plaintiffs/applicants together with one other person (the sixth plaintiff), who were all remisiers, entered into an agreement with the respondent/defendant, a broking house. F
Subsequently, a dispute arose, leading to the filing of an action by the plaintiffs against the respondent. The applicants did not appear as witnesses in support of their claim. Instead, only the sixth plaintiff gave evidence, and the evidence had the effect of establishing the claims of the applicants. However, in the midst of G
the submissions, it was discovered that the sixth plaintiff was made a bankrupt. Despite no sanction obtained from the Director General of Insolvency ('DGI'), the trial proceeded on. The learned judge found the sixth plaintiff a competent witness as there was no law that prevented a bankrupt from giving any evidence, and H
found for the applicants. However, the sixth plaintiff's claim was dismissed for want of sanction. Upon appeal to the Court of Appeal, the sixth plaintiff's evidence was held to be inadmissible for want of sanction leaving the applicants without any evidence to support their case and consequently, the respondent's appeal I

was allowed. Thus, the appeal by the applicants on determination of the question as to whether the evidence of a bankrupt, apart from his capacity as one of the plaintiffs in an action, was inadmissible, even though the type and cause of action of the other plaintiffs were similar as against the respondent.

Held (allowing appeal with costs)
Per Suriyadi Halim Omar FCJ delivering the judgment of the court:

(1) Section 38 of the Bankruptcy Act 1967 ('the Act') provided for restriction in a bankrupt's rights to maintain an action without the previous sanction of the DGI. In the instant case, the sixth plaintiff was obviously incompetent to maintain any action without the previous sanction of the DGI, unless the action falls under the exception "for damages in respect of an injury to his person". The requirement for sanction is mandatory as the proprietary interest of the bankrupt passes to the DGI and it will be up to the latter to decide whether to adopt an action or disclaim it, or give free rein to the bankrupt to continue with the action by sanctioning it. (paras 12 & 13)

(2) The sixth plaintiff had been ill-advised and hence failed to obtain the sanction whilst in the midst of the case. The sixth plaintiff had also failed to file an appeal thus surrendering to the wisdom of the learned judge. The issue of sanction on the facts had therefore become academic and a non-issue thus rendering s. 38 of the Act inapplicable. (para 15)

(3) Section 118 of the Evidence Act 1950, a specific provision that deals with the issues of witnesses, was highly relevant to the instant case. Even though the sixth plaintiff was an interested witness in a certain sense, if his testimony was tainted, then, some form of corroboration was required in order for the court to act on it. There was no legal presumption that the evidence of an interested witness is to be disbelieved. Eventually, everything falls back on the court to decide whether his evidence is to be accepted or not. *Liow Siow Long v. PP* (refd); *Rattan Singh v. PP* (refd). (paras 19 & 22)

(4) Under the Evidence Act 1950, a debtor's status as a bankrupt is not a disability that will dilute his competency to testify, especially if all the rules of evidence have been complied with. That being so, the sixth plaintiff's evidence, despite being a bankrupt, was admissible under the Evidence Act 1950. (para 23)

(5) With the absence of any law that deems or states that a bankrupt's evidence is inadmissible without more, the question for determination was answered in the negative. The quality, relevancy or admissibility of a specific piece of evidence adduced by the bankrupt is a separate matter subject to the rules of evidence to be decided by the presiding judge. (para 24)

Bahasa Malaysia *Translation Of Headnotes*

Kelima-lima plaintif pertama/pemohon-pemohon bersama-sama dengan seorang lagi (plaintif keenam), yang kesemuanya adalah remisier, memasuki satu perjanjian dengan responden/defendan, sebuah syarikat broker. Selepas itu, suatu pertikaian timbul, yang menjurus kepada pemfailan tindakan oleh kesemua plaintif terhadap responden. Pemohon-pemohon tidak hadir sebagai saksi untuk menyokong tuntutan mereka. Sebaliknya, hanya plaintif keenam yang memberikan keterangan, dan keterangan tersebut mempunyai kesan membuktikan tuntutan pemohon-pemohon. Walau bagaimanapun, semasa perbicaraan, didapati bahawa plaintif keenam telah diisytiharkan bankrap. Walaupun tiada sanksi yang diperolehi daripada Ketua Pengarah Insolvensi ('KPI'), perbicaraan masih diteruskan. Yang arif hakim mendapati bahawa plaintif keenam adalah saksi yang kompeten kerana tidak ada undang-undang yang menghalang seseorang bankrap daripada memberi keterangan dan memutuskan bagi pihak pemohon-pemohon. Walau bagaimanapun, tuntutan plaintif keenam ditolak kerana ketiadaan sanksi. Atas rayuan ke Mahkamah Rayuan, diputuskan bahawa keterangan plaintif keenam tidak boleh diterima kerana ketiadaan sanksi lalu meninggalkan pemohon-pemohon tanpa keterangan yang menyokong kes mereka dan dengan itu, rayuan responden dibenarkan. Maka, rayuan ini oleh pemohon-pemohon bagi pertimbangan persoalan sama ada keterangan seorang bankrap, selain daripada kapasitinya sebagai salah seorang plaintif di dalam tindakan, tidak boleh diterima, walaupun jenis dan kausa tindakan plaintif-plaintif lain adalah serupa terhadap responden.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Suriyadi Halim Omar HMP menyampaikan penghakiman mahkamah:

(1) Seksyen 38 Akta Kebankrapan 1967 ('Akta') memperuntukkan sekatan terhadap hak seseorang bankrap untuk mengekalkan tindakan tanpa sanksi terdahulu KPI. Di dalam kes ini, plaintif keenam jelas tidak kompeten untuk mengekalkan apa-apa tindakan tanpa sanksi terdahulu KPI, kecuali jika tindakan tersebut terangkum di bawah pengecualian "untuk ganti rugi berkaitan dengan kecederaan diri". Keperluan untuk sanksi adalah mandatori kerana kepentingan proprietari seseorang bankrap berpindah kepada KPI dan ia adalah terpulang kepada KPI untuk memutuskan sama ada hendak memulakan tindakan atau menafikannya, atau membiarkan si bankrap meneruskan tindakan dengan memberikan sanksi.

(2) Plaintif keenam tidak dinasihatkan dengan sewajarnya dan dengan itu gagal mendapatkan sanksi semasa perjalanan perbicaraan. Plaintif keenam juga gagal memfailkan rayuan dan oleh itu mengakui keputusan yang arif hakim. Isu sanksi berdasarkan fakta dengan itu telah menjadi akademik dan tidak lagi menjadi isu serta menjadikan s. 38 Akta tidak terpakai.

(3) Seksyen 118 Akta Keterangan 1950, suatu peruntukan spesifik yang merujuk kepada isu-isu saksi adalah amat relevan kepada kes ini. Walaupun plaintif keenam adalah saksi yang berkepentingan di dalam makna tertentu, jika keterangannya tercemar, maka, suatu bentuk sokongan adalah diperlukan untuk mahkamah bertindak ke atasnya. Tidak ada anggapan undang-undang bahawa keterangan saksi berkepentingan tidak boleh dipercayai. Akhirnya, kesemua perkara adalah berbalik kepada mahkamah untuk memutuskan sama ada keterangan tersebut adalah diterima atau tidak. *Liow Siow Long v. PP* (dirujuk); *Rattan Singh v. PP* (dirujuk).

(4) Di bawah Akta Keterangan 1950, status penghutang sebagai bankrap bukanlah satu kecacatan yang akan melemahkan kekompetenannya untuk memberi keterangan, khususnya jika kesemua peraturan keterangan telah dipatuhi. Oleh yang demikian, keterangan plaintif keenam, walaupun diisytiharkan bankrap, boleh diterima di bawah Akta Keterangan 1950.

(5) Dengan ketiadaan undang-undang yang menganggap atau menyatakan bahawa keterangan seseorang bankrap tidak boleh diterima tanpa alasan, persoalan bagi pertimbangan telah dijawab secara negatif. Kualiti, kerelevanan atau kebolehterimaan sesuatu keterangan yang dikemukakan oleh seorang bankrap adalah perkara berasingan tertakluk kepada peraturan keterangan untuk diputuskan oleh hakim yang bersidang.

Case(s) referred to:

Chai Kor v. PP [1965] 1 LNS 16 FC ***(refd)***
Gan Hong Hoe v. Gan Kim Hee [1939] 1 LNS 26 HC ***(refd)***
John and Another v. Neiman Holdings Pty Ltd [1986] 84 FLR 84 ***(dist)***
Kee Lik Tian v. PP [1983] 1 LNS 55 HC ***(refd)***
Kwan Chew Shen v. Citibank, N.A. [1987] 1 CLJ 314; [1987] CLJ (Rep) 704 HC ***(refd)***
Lim Wah Siang v. Perwira Affin Bank Bhd [1997] 1 CLJ 759 CA ***(refd)***
Liow Siow Long v. PP [1969] 1 LNS 98 HC ***(refd)***
Lord's Trustees v. Great Eastern Railway Co [1908] 1 KB 195 ***(refd)***
Priyakumary Muthucumaru & Anor v. Gunasingam Ramasingam [2006] 4 CLJ 458 CA ***(dist)***
Ranbaxy (Malaysia) Sdn Bhd v. E.I Du Pont Nemours & Co [2012] 9 CLJ 79 CA ***(refd)***
Rattan Singh v. PP [1970] 1 LNS 132 HC ***(refd)***
Re Lofthouse [2001] 107 FCR 151 ***(dist)***
Re Wilson ex parte Vine [1878] 8 Ch D 364 ***(refd)***
Rose v. Buckett [1901] 2 KB 449 ***(refd)***
Sidek Ludan v. PP [1995] 1 LNS 219 HC ***(refd)***
The Topps Company Inc v. Mally Jaya Sdn Bhd [1998] 2 CLJ Supp 235 HC ***(refd)***

Legislation referred to:

Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978, First Schedule r. 2(6)(b)
Bankruptcy Act 1967, ss. 17(7), 36, 38(1)(a), (c), (e)
Evidence Act 1950, ss. 118, 132
Federal Constitution, art. 48(1)
Income Tax Act 1967, s. 111(4), (6)
Legal Profession Act 1976, s. 11(b)(ii)
Partnership Act 1961, s. 35(1)

Bankruptcy Act 1966 [Aust], s. 60(2)

Other source(s) referred to:

Augustine Paul, *Evidence Practice and Procedure,* 3rd edn, p 915
DF Mulla, *The Law of Insolvency in India,* 2nd edn, p 293
Ian F Fletcher, *The Law of Insolvency,* 2nd edn, p 191
Peter Gillies, *Law of Evidence in Australia,* 2nd edn, p 653

A *For the appellants - Mohammad Rafaei Adnan (Muhammad Syahri Adnan with him); M/s Rafaei & Co*
For the respondent - Chandrasekar K Kandasamy; M/s Chandrasekar & Assoc

Reported by S Barathi

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JUDGMENT

Suriyadi Halim Omar FCJ:

C **[1]** This is an appeal by the first to the fifth plaintiffs (first five plaintiffs/applicants), and the question for determination is as follows:

> Is the evidence of a bankrupt, apart from his capacity as one of the plaintiffs in an action, inadmissible, even though the type and cause of action of the other plaintiffs are similar as against the respondent (defendant)?

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[2] Sometime in 1994 the first five plaintiffs and the sixth plaintiff who were remisiers, entered into a "Remisier's Agreement" E with the defendant, which was a broking house. On 19 August 1999 these two parties entered into a new agreement. A dispute which centered on the imposition of various fees by the defendant arose later leading to compromises whereupon certain refunds were made to all the six plaintiffs. As the matter was not completely F resolved the six plaintiffs filed an action against the defendant, demanding the refund of paid charges amounting to RM558,123.47 imposed in 1994 and 1995. None of the first five plaintiffs appeared as witnesses in support of their claims. Only the sixth plaintiff gave evidence. As the claims of each of the plaintiffs G were similar, with the distinguishing factor being the amount filed, the sixth plaintiff's evidence had the effect of establishing the claims of the other five plaintiffs (as found by the learned judge).

[3] Nothing should be inferred from the absence of the first five H plaintiffs to appear in court as there is no requirement in law for them to personally testify in support of their respective claims. Peter Gillies in *Law of Evidence in Australia* 2nd edn. wrote at p. 653:

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> A party in civil proceedings may decline to testify, and/or adduce evidence on a particular issue, such as by failing to call a particular witness … The approach of the courts has been that a relevant failure to call evidence or to testify in civil procedures is of evidential significance.

[4] Success of any claim depends on sufficiency of the relevant and admissible evidence made available to the court which may come from various sources. A

[5] There was evidence adduced in court showing that the defendant had admitted to some of the erroneous charges, which should not have been imposed, and had indeed refunded some of the 1999 charges. On 15 March 2005 the sixth plaintiff was made a bankrupt ie, after the claims had been filed. That bankrupt status was only discovered in the midst of the submissions in 2008. Despite no sanction having been obtained from the Director General of Insolvency ("DGI") the trial still proceeded on. The court eventually delivered its decision on 2 February 2009. B C

[6] The learned judge clarified that there was no law that prevented a bankrupt from giving any evidence and in the course of it alluded to the case of *The Topps Company Inc v. Mally Jaya Sdn Bhd* [1998] 2 CLJ Supp 235. Low Hop Bing J (as His Lordship then was) had remarked: D

> In the circumstances, the mere fact that the deponent was an undischarged bankrupt did not deprive him of any legal competency in affirming an affidavit in support of the *ex parte* application in these proceedings specifically or, for that matter, any affidavit for use in any court or other proceedings generally. E

[7] Having found the sixth plaintiff a competent witness, with his evidence being admissible for the first five plaintiffs' claims, the learned judge found for them but dismissed the sixth plaintiff's claim for want of sanction. F

[8] The defendant then filed an appeal at the Court of Appeal though not the sixth plaintiff despite having had his claim dismissed. The Court of Appeal decided that the want of sanction caused the sixth plaintiff's evidence to be inadmissible, leaving the first five plaintiffs high and dry, and without any evidence to support their respective cases. At the end of the appeal the defendant's appeal was allowed followed by the consequential order that all the plaintiffs' claims be dismissed. The Court of Appeal said: G H

> ... in order to maintain plaintiff no. 6's action against the defendant [the appellant], plaintiff no. 6 has to obtain the sanction of the OA under s. 38(1)(a) Bankruptcy Act 1967. But the plaintiff no. 6 has never applied for the sanction. I

A Hence, the plaintiff no. 6 does not have any capacity or *locus standi* to maintain this action after 15 March 2005.

Plaintiffs' no. 1 to 5 have collectively declined to testify in support of their own case. Plaintiffs' 1 to 5 bear the burden of proving their claim against the defendant. Plaintiffs' no. 1 to 5 have
B therefore failed to establish their own claim against the defendant …

[9] Being dissatisfied the first five plaintiffs, hereinafter referred to as the applicants, obtained leave to appeal from this court on
C 6 March 2012 hence the matter before us. Again the sixth plaintiff filed no appeal to this apex court to indicate any interest.

[10] With no appeal having been filed by the sixth plaintiff (thus accepting the learned judge's decision premised on his failure to
D obtain sanction from the DGI), the question for determination could be rehashed this way: 'by virtue of his status as a bankrupt his evidence by law is inadmissible (and hence of no help to the first five plaintiffs)'.

Section 38 Of The Bankruptcy Act 1967 ("The Act")

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[11] When a debtor is adjudicated a bankrupt his property vests in the DGI immediately and with that property being divisible among his creditors. No conveyance, assignment or transfer is required for the bankrupt's property to vest in the DGI who now
F acts as the trustee of the creditors. Thenceforth the bankrupt will be subject to certain statutory restrictions and responsibilities, amongst them to give an account of all his monies and property to the DGI every six months, handing over to the DGI any unexpanded funds, informing him of any change of address, and
G the like. In a gist the bankrupt is not as free as an unadjudicated person.

[12] One of the many restrictions that curb the bankrupt's rights is found in s. 38 of the Act, and this provision reads:

H … the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Director General of Insolvency.

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[13] The bankrupt, in this case the sixth plaintiff, is obviously incompetent to maintain any action without the previous sanction of the DGI, unless the action falls under the exception "for damages in respect of an injury to his person". This exemption of a sanction for a tort of a personal nature has led to the delineation of the species of his property into that of the bankrupt's estate and property derived from damages in respect of an injury to his person pursuant to a successful court action. Some of the examples would be claims for defamation, injury to credit or reputation or for wounded feelings (*Rose v. Buckett* [1901] 2 KB 449; *Lord's Trustees v. Great Eastern Railway Co* [1908] 1 KB 195). He retains the right to sue in respect of such causes of action even if they arose after the adjudication (*Re Wilson ex parte Vine* [1878] 8 Ch D 364). The fruits of that litigation will not vest on the DGI. In *The Law of Insolvency by Ian F Fletcher* 2nd edn. at p. 191, the author stated:

> In such circumstances the bankrupt remains personally entitled to sue and may moreover retain the fruits of any success he may achieve in litigation, since otherwise his incentive to vindicate the legal wrongs done to him would be much diminished.

[14] Unless it falls within the exception, and is adjudicated bankrupt subsequent to an action being filed, he is also not exempted from applying for a sanction to allow him to continue with the action. This requirement is mandatory, as the proprietary interest of the bankrupt passes to the DGI and it will be up to the latter to decide whether to adopt the action or disclaim it, or give free rein to the bankrupt to continue with the action by sanctioning it. Needless to say if the sanction is refused, before or after an action is filed, unless falling within the exception, the action dies a natural death.

[15] From the facts made available to us, the issue of sanction has become academic and a non-issue, thus rendering s. 38 of the Act inapplicable and unhelpful; this provision normally takes centre stage when the issue of sanction from the DGI for an action is required or not, is argued by parties. The bankrupt's ill-advised action of not obtaining that sanction whilst in the midst of the case caused him to lose his case. By his failure to file an appeal, and thus surrendering to the wisdom of the learned judge, our time should not be spent further on this non-issue. Suffice to say,

A the bankrupt's acquiescence to the learned judge's decision made the plethora of cases like *John and Another v. Neiman Holdings Pty Ltd* [1986] 84 FLR 84; *Re Lofthouse* [2001] 107 FCR 151; *Priyakumary Muthucumaru & Anor v. Gunasingam Ramasingam* [2006] 4 CLJ 458 etc., supplied and canvassed in the
B respondent's written submission, of no further help. In *John and Another v. Neiman Holdings Pty Ltd (supra)* the plaintiffs had instituted legal action. Subsequently the first plaintiff entered into a deed of arrangement which on closer scrutiny was discovered to be a deed of assignment within the meaning of the Bankruptcy
C Act 1966. The trustee then had yet to determine whether to continue to proceed with the legal action or not. The second plaintiff then sought an adjournment merely to know the attitude or election of the first plaintiff's trustees. The defendant opposed the adjournment application. The question discussed in court
D pertained to the operation of s. 60(2) of the Bankruptcy Act, as to what happens in such a situation if one of them becomes a bankrupt. By virtue of the latter provision Young J said the proceeding automatically is stayed. In *Priyakumary Muthucumaru & Anor v. Gunasingam Ramasingam (supra)* the discussion relates to
E the issue of sanction. The bankrupt respondent never made any application to the Official Assignee for a sanction and hence was not granted one. Come the hearing date the Official Assignee was in court, and based on his appearance, the High Court held that s. 38(1)(a) of the Act was inapplicable. His presence in court
F signified an implied consent in allowing the respondent to continue with the proceedings. Zulkefli Makinudin JCA (as His Lordship then was) when allowing the appeal remarked that consent meant a written consent under s. 38(1)(a) of the Act.

G **[16]** Without the need to unfold every case, it is obvious that the facts and the law under discussion or for that matter the issues for determination in those cases are clearly distinguishable to the current appeal. Needless to say none are directly on point on the issue of the competency of a bankrupt as a witness. About the
H only worthy issue now left for determination before us is the legal effect of his evidence as a bankrupt and its effect on the applicants' case. Before identifying what he can do as a bankrupt it will not do any harm if we identify some of the things he is

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restrained from so doing. The following are some of the legal restraints and disqualifications on a bankrupt after an adjudication order has been made against him:

1. disqualified from holding the office of a Member of Parliament (art. 48(1) of the Federal Constitution);
2. holding public office eg, being appointed or acting as a Sessions Court Judge, Magistrate or being nominated or elected to or holding or exercising the office of Councillor of a local authority (s. 36 of the Act);
3. disqualified from being appointed or remaining as a Chairman or director in statutory offices (r. 2(6)(b) of the First Schedule of Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 (Act 202);
4. practising in certain professions (s. 11(b)(ii) of the Legal Profession Act 1976);
5. carrying on business or in partnership or by way of a company (s. 35(1) of the Partnership Act 1961);
6. working in the business of a relative (s. 38(1)(e)(i) of the Act);
7. maintaining any action without the previous sanction of the DGI other than an action for damages in respect of an injury to his person (s. 38(1)(a) of the Act);
8. leaving Malaysia without the previous permission of the DGI or of the court (s. 38(1)(c) and s. 38A(1) of the Act);
9. receiving pension or other gratuity (s. 20(2) of the Act); and
10. enforcing his rights under certain legislations (see s. 111(4) and (6) of the Income Tax Act 1967; see *The Law and Practice of Bankruptcy in Malaysia* by Khoo Kay Ping).

[17] In stark contrast to the above random list of ten legal restraints suffered by a bankrupt, which incidentally is silent about his competency as a witness he is not prevented from doing some other ordinary things. He is free to contract, he may witness a signature, affirm affidavits on condition he discloses his bankrupt status and many others (*Gan Hong Hoe v. Gan Kim Hee* [1939] 1 LNS 26; *Kwan Chew Shen v. Citibank, N.A.* [1987] 1 CLJ 314;

[1987] CLJ (Rep) 704; *Lim Wah Siang v. Perwira Affin Bank Bhd* [1997] 1 CLJ 759). A debtor therefore is thus not totally debilitated by his bankrupt status.

[18] If a bankrupt were to be construed as an incompetent witness, it would undo statutory requirements that legislate a bankrupt to file an affidavit giving a true picture of his assets at the DGI's office, within 24 hours after the receiving order has been granted by the court (whether adjudged bankrupt or not). The same uncomfortable scenario would be repeated when in a public examination of the bankrupt he is required to answer any questions posed, under oath (s. 17(7) of the Act). Under s. 132 of the Evidence Act 1950 a witness is not excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer will amongst others criminate him. In *The Law of Insolvency in India* by DF Mulla 2nd edn. p. 293, the author wrote:

> In India a witness is not excused from answering any question as to any matter relevant to the issue in any civil or criminal proceeding upon the ground that the answer to such question will criminate … As regards the insolvent himself, the rule in India is the same as in England and an insolvent is bound to answer all questions relating to his conduct, dealings or property, even though the answer may criminate him (*Re Joseph Perry* [1919] 46 Cal. 966/1000).

Section 118 Of The Evidence Act 1950

[19] Section 118 of the Evidence Act 1950 is a specific provision that deals with issues of witnesses and highly relevant in shedding some light on the matter at hand. It reads:

> All persons shall be competent to testify unless the court considers that they are prevented from understanding the question put to them or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

[20] The above provision refers to categories of witnesses who may be disqualified from giving evidence by reason of tender age, extreme old age, incapacitated by diseases whether of body or mind, or any other cause of the same kind. The sole test of

competence under this section is his intellectual capacity ie, his understanding (*Evidence Practice and Procedure* by Augustine Paul 3rd edn. p. 915; *Sidek Ludan v. PP* [1995] 1 LNS 219). Under the illustration of Explanation a mentally disordered person or lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving direct rational answers to them. Even a dumb witness is a competent witness if he can give evidence in an intelligent manner eg, by writing or by signs (*Chai Kor v. PP* [1965] 1 LNS 16). But eventually the court must ascertain their competency (*Kee Lik Tian v. Public Prosecutor* [1984] 1 LNS 55).

[21] In *Ranbaxy (Malaysia) Sdn Bhd v. E.I Du Pont Nemours & Co* [2012] 9 CLJ 79 the Court of Appeal said:

> Section 118 of the Evidence Act 1950 provides that all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender age, extreme old age, disease or any other cause of the same kind. Section 120(1) of the Evidence Act 1950 states that in all civil proceedings the parties to the suit shall be competent witnesses …

[22] For completeness of argument, even though the sixth plaintiff ie, the bankrupt was an interested witness in a certain sense, suffice for us to say that if his testimony was tainted then some form of corroboration was required in order for the court to act on it. It must be borne in mind that there is no legal presumption that the evidence of an interested witness is to be disbelieved. Eventually everything falls back on the court to decide whether his evidence is to be accepted or not (*Liow Siow Long v. PP* [1969] 1 LNS 98; *Rattan Singh v. PP* [1970] 1 LNS 132).

[23] Within the context of s. 118 of the Evidence Act 1950 a bankrupt, unless falling within the above legislated restricted categories, surely cannot *per se* be equated with lack of intellectual capacity to understand. And neither is bankruptcy a disease. To wind it up, under the Evidence Act 1950 a debtor's status as a bankrupt is not a disability that will dilute his competency to testify, especially if all the rules of evidence have been complied with. That being so the sixth plaintiff's evidence under the Evidence Act 1950, and despite being a bankrupt, is admissible.

[24] With the absence of any law that deems or states that a bankrupt's evidence is inadmissible without more we therefore answer the question for determination in the negative. The quality, relevancy or admissibility of a specific piece of evidence adduced by the bankrupt is a separate matter subject to the rules of evidence, to be decided by the presiding judge. The appeal is thus allowed with costs. The order of the court of appeal is set aside and the order of the High Court is restored. We now invite parties to suggest the amount regarding costs.